

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Phillip Freeman,

Plaintiff,

vs.

Leann Bertsch, Director, North Dakota
Department of Corrections and
Rehabilitation,

Defendant.

**ORDER ADOPTING
REPORT AND RECOMMENDATION**

Case No. 1:06-cv-093

On November 20, 2006, the petitioner, Phillip Freeman, filed this petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. The Court ordered the Defendant to file a response, and on January 8, 2007, the Defendant filed an answer to the petition. On January 30, 2007, the Defendant filed a motion to dismiss the petition. Freeman has failed to file a response to the motion to dismiss despite the Court's extension of time to file a response. Magistrate Judge Charles S. Miller, Jr. reviewed Freeman's petition and the pleadings and submitted a Report and Recommendation. On April 3, 2007, Judge Miller recommended that the Defendant's motion to dismiss be granted and that Freeman's petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody be denied. Freeman was then given ten (10) days to file an objection to the Report and Recommendation. No objection was filed.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the entire record and finds the Report and Recommendation to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 15) in its entirety and **GRANTS** the Defendant's motion to dismiss (Docket No. 8) and **DISMISSES** Freeman's Petition Under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody (Docket No. 1). The Court certifies that any appeal would be frivolous, could not be taken in good faith, and may not be taken

in forma pauperis. The Court further certifies that Freeman has failed to make a substantial showing of the denial of a constitutional right and will not grant a certificate of appealability.

IT IS SO ORDERED.

Dated this 23rd day of April, 2007.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court